

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request that City Join Amicus Brief in the case of Foster v. City of Napa, First District Court of Appeal No. A084652

MEETING DATE: March 17, 1999

PREPARED BY: City Attorney

RECOMMENDATION: That the City join the amicus brief in the case of Foster v. City of Napa, First District Court of Appeal No. A084652.

BACKGROUND: *Amicus* briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court in order to assist the court in understanding all of the issues and arrive at a conclusion.

This case represents an issue of importance to the city in that the outcome may effect the ability of police agencies to investigate and prosecute spousal abuse cases.

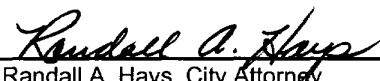
The facts of the case involve a City of Napa police officer (Foster) who was arrested by the Napa Police Department for spousal abuse based upon certain statements made at the crime scene by the officer's wife and her numerous visible injuries. After the arrest the wife recanted her previous statements and the District Attorney refused to prosecute the case. Foster subsequently filed suit against the city based upon a theory of "bad faith false arrest."

In the civil case the city filed a motion for summary judgment on the basis that the arrest was made pursuant to a facially valid warrant and supported by probable cause. The trial court granted the city's motion and Foster has appealed. The critical issues on appeal include: (1) the extent to which police officers are entitled to rely on a victim's report of spousal abuse; and (2) whether probable cause can be vitiated by perceived discrepancies in the victim's statements.

Basically, Foster will try to argue for a heightened probable cause standard for spousal abuse cases. This presents serious policy concerns. First, imposing such a heightened probable cause standard presupposes that spousal abuse victims are inherently unreliable or untrustworthy. Second, such a standard may hamper law enforcement's efforts to assist abuse victims by limiting their ability to provide timely assistance. Third, it would deter victims from reporting abuse. Spousal abuse cases are already some of the most difficult cases facing law enforcement. Should Foster prevail in this matter those cases would become only more onerous.

FUNDING: Not applicable.

Respectfully submitted,


Randall A. Hays, City Attorney

APPROVED: _____

H. Dixon Flynn -- City Manager